

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CARSON P., by his next friend)
Crystal Foreman; PAULETTE V.,)
by her next friend, Sherri Wheeler;)
DANIELLE D., by her next friend,)
Jodell Bruns; CHERYL H., by her)
next friend, Susan Nowak; and)
JACOB P., by his next friend, Sara)
Jensen; BOBBI W., by her next)
friend, Micheline Creager; and)
HANNAH A., by her next friend,)
Vanessa Nkwocha, on their own)
and on behalf of all others similarly)
situated,)

Plaintiffs,)

vs.)

DAVE HEINEMAN, as Governor)
of the State of Nebraska; NANCY)
MONTANEZ, as Director of)
Services, Nebraska Department)
of Health and Human Services;)
JOANN SCHAEFER, as the)
Director of Regulation and)
Licensure, Nebraska Department)
of Health and Human Services;)
RICHARD NELSON, as the)
Director of Finance and Support,)
Nebraska Department of Health)
and Human Services; DENNIS)
LOOSE, as the Chief Deputy)
Director, Nebraska Department)
of Health and Human Services; and)

4:05CV3241

**MEMORANDUM
AND ORDER**

TODD RECKLING, as the)
Administrator of the Department)
of Health and Human Services')
Office of Protection and Safety,)
)
Defendants.)

Pursuant to 28 U.S.C. § 636(b)(1) and NECivR 72.3, all parties have filed objections (filings 93 & 96) from the Magistrate Judge's Report and Recommendation (filing 90), which recommends, among other things, that I deny Plaintiffs' Motion for Class Certification and Appointment of Class Counsel (filing 11) and grant the Defendants' Motion to Dismiss (filing 70) on the ground that this court should abstain from hearing Plaintiffs' claims under Younger v. Harris, 401 U.S. 37 (1971).

After de novo review of the Magistrate Judge's nearly 200-page Report and Recommendation, the objections of the parties, and the accompanying voluminous briefs, I agree with the Magistrate Judge that Plaintiffs' Motion for Class Certification and Appointment of Class Counsel should be denied and Defendants' Motion to Dismiss should be granted on the basis of Younger abstention for the reasons thoroughly and clearly explained in the Magistrate Judge's Report. 28 U.S.C. § 636(b)(1); NECivR 72.3.

Accordingly,

IT IS ORDERED:

1. The Magistrate Judge's Recommendations (filing 90) that Plaintiffs' Motion for Class Certification and Appointment of Class Counsel (filing 11) be denied and that Defendants' Motion to Dismiss (filing 70) be granted on the ground that this court should abstain from hearing Plaintiffs' claims under Younger v. Harris, 401 U.S. 37 (1971), are adopted;

2. Plaintiffs' Motion for Class Certification and Appointment of Class Counsel (filing 11) is denied;

3. Defendants' Motion to Dismiss (filing 70) is granted on the ground that this court should abstain from hearing Plaintiffs' claims under Younger v. Harris, 401 U.S. 37 (1971);

4. The parties' objections (filings 93 & 96) to the Magistrate Judge's Report and Recommendation are denied;

5. Defendants' Motion to Strike Plaintiffs' Index of Supplemental Authorities (filing 100) is denied as moot, as the court did not consider the supplementary material; and

6. By separate document, judgment shall be entered dismissing this case on the basis of abstention under Younger v. Harris, 401 U.S. 37 (1971).

January 19, 2007.

BY THE COURT:
s/ *Richard G. Kopf*
United States District Judge